FILE COPY

Supreme Court

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

vs.

FORT SCOTT BONDHOLDERS' COMMITTEE, ET AL.

## Brief for Respondents in Opposition to Petition for Writs of Certiorari


DAVIS POLK WARDWELL SUNDERLAND & KIENDL
15 Broad Street
New York 5, N. Y.
EDWIN S. S. SUNDERLAND
THOMAS O'G. FITZGERALD
JAMES L. HOPPER
*Attorneys for Fort Scott Bondholders' Committee*

HUNTON, WILLIAMS, ANDERSON, GAY & MOORE
1600 Electric Building
Richmond 12, Virginia
HENRY W. ANDERSON
GEORGE D. GIBSON
JOHN W. RIELY
*Attorneys for Prior Lien Bondholders' Committee*

CRAVATH, SWAINE & MOORE
15 Broad Street
New York 5, N. Y.
ROBERT T. SWAINE
LEONARD D. ADKINS
*Attorneys for Consolidated Bondholders' Committee*

WHITE & CASE
14 Wall Street
New York 5, N. Y.
FREDERICK McGOVERN
JAMES R. WEBB
*Attorneys for Southern Pacific Company, The Kansas City, Fort Scott and Memphis R. Co. Collateral Mortgage*

BATTERSON, PARKER, KELLER & DEVO
70 Broadway
New York 6, N. Y.
ALEXANDER M. LAWRIE
*Attorneys for Central Hanover Bank and Trust Company, Trustee, St. Louis-San Francisco R. Co. Prior Lien Mortgage*

MILBANK, TWEED, HOPE, HADLEY & McCLOY
15 Broad Street
New York 5, N. Y.
ORVILLE W. WOOD
*Attorneys for The Chase National Bank of the City of New York and John H. Ast, Trustee, St. Louis-San Francisco R. Co. Consolidated Mortgage*


Dated October 25, 1946

**Brief for Respondents in Opposition to Petition for Writs of Certiorari**

---

## OPINION OF COURT BELOW

The opinion of the court below (the Circuit Court of Appeals for the Eighth Circuit), printed at R. 87, is reported (but only as to result) in 156 F. 2d 161.

## JURISDICTION

The date of the order (R. 87) sought to be reviewed is June 19, 1946. A motion by the petitioners for a rehearing was denied (R. 98) on September 4, 1946.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 347).

## STATEMENT

The Interstate Commerce Commission plan for the reorganization of St. Louis-San Francisco Railway Company under Section 77 of the Bankruptcy Act was approved by the District Court on April 10, 1945, and its order was affirmed by the Circuit Court below on February 8, 1946. Certiorari was denied on June 10, 1946. A petition for rehearing of such denial was denied on October 14, 1946.

After the Plan had been approved by the District Court, it was submitted by the Commission, in accordance with subsection (e) of Section 77 (quoted in Appendix A hereto) to each class of creditors having a lien on the property, the Commission having found, and the District Court having

affirmed the finding, that the interests of unsecured creditors, and the equities of stockholders, had no value. The Plan was accepted by the holders of more than 98% of the voted claims in each class (R. 38). It then came back to the District Court for confirmation.

At the confirmation hearing (R. 8) petitioners made no claim that the Plan had not been accepted by the statutory vote or that such acceptances had been "made or procured by any means forbidden by law" (Section 77(e); Appendix A, p. 2). Nor did they offer evidence on any other point. The Plan was, accordingly, confirmed by an order of November 15, 1945 (R. 51).

Petitioners appealed from the confirmation order to the Circuit Court below. Respondents moved to docket and dismiss the appeal on the ground that the only question that might be raised at the confirmation hearing, in the absence of any attack on the percentages of acceptance, was whether the acceptances of the Plan had been "made or procured by any means forbidden by law" and, no issue being tendered on that question, the appeal presented no substantial question. The motion was granted on June 19, 1946.

It is to review that order, after denial of rehearing petitions on September 4, 1946, that the present petition has been filed.

## ARGUMENT

Section 77(e) provides that, upon certification by the Commission of the vote, the District Court:

> ". . . shall confirm the plan if satisfied that it has been accepted by or on behalf of creditors of each class

> to which submission is required under this subsection holding more than two thirds in amount of the total of the allowed claims of such class which have been reported in said submission as voting . . . and that such acceptances have not been made or procured by any means forbidden by law . . ."

If satisfied on these two points, the judge's action is automatic. This was pointed out by the Court in *Reconstruction Finance Corporation* v. *The Denver and Rio Grande Western R.*, ..... U. S. ...., 90 L. ed. *1134, *1155, June 10, 1946:

> "Under subsection (e), note 9 *supra,* the judge automatically confirms a plan after a vote of classes of creditors if satisfied that two thirds of each class have [legally] accepted."

The 98% vote was conclusively evidenced by the Commission's certificate (R. 38) and petitioners expressly disclaimed any question of it (R. 14-15).

So the only issue petitioners might have raised was whether the acceptances had been "made or procured by any means forbidden by law". But in fact there was no suggestion by them at the confirmation hearing (R. 8), or at any other time, of any illegality in this respect, nor did petitioners offer any evidence on any other point (R. 16).

The appeals to the Circuit Court, therefore, presented no substantial question. The action of the Circuit Court in dismissing insubstantial appeals presents no question meriting review on certiorari.

## CONCLUSION

The petition should be denied.

October 25, 1946.

Respectfully submitted,

DAVIS POLK WARDWELL SUNDERLAND & KIENDL
15 Broad Street,
New York 5, N. Y.,
*Attorneys for Fort Scott Bondholders' Committee*

EDWIN S. S. SUNDERLAND,
THOMAS O'G. FITZGIBBON,
JAMES L. HOMIRE,
*Of Counsel*

HUNTON, WILLIAMS, ANDERSON, GAY & MOORE
1003 Electric Building
Richmond 12, Virginia,
*Attorneys for Prior Lien Bondholders' Committee*

HENRY W. ANDERSON,
GEORGE D. GIBSON,
JOHN W. RIELY,
*Of Counsel*

CRAVATH, SWAINE & MOORE
15 Broad Street,
New York 5, N. Y.
*Attorneys for Consolidated Bondholders' Committee*

ROBERT T. SWAINE,
LEONARD D. ADKINS,
*Of Counsel*

WHITE & CASE
14 Wall Street,
New York 5, N. Y.
*Attorneys for Bankers Trust Company, Trustee, The Kansas City, Fort Scott and Memphis R. Co. Refunding Mortgage.*

FITZHUGH MCGREW,
JESSE E. WAID,
*Of Counsel*

RATHBONE, PERRY, KELLEY, & DRYE
70 Broadway,
New York 4, N. Y.
*Attorneys for Central Hanover Bank and Trust Company, Trustee, St. Louis-San Francisco R. Co. Prior Lien Mortgage.*

ALEXANDER M. LEWIS,
*Of Counsel*

MILBANK, TWEED, HOPE, HADLEY & McCLOY
15 Broad Street,
New York 5, N. Y.
*Attorneys for The Chase National Bank of the City of New York and John A. Aid, Trustees, St. Louis-San Francisco R. Co. Consolidated Mortgage.*

ORVILLE W. WOOD,
*Of Counsel.*

## APPENDIX A

### Excerpts from Section 77(e) of the Bankruptcy Act, as Amended.

"If the judge shall approve the plan, he shall file an opinion, stating his conclusions and the reasons therefor, and enter an order to that effect, and shall send a certified copy of such opinion and order to the Commission. The plan shall then be submitted by the Commission to the creditors of each class whose claims have been filed and allowed in accordance with the requirements of subsection (c) hereof, and to the stockholders of each class, and/or to the committees or other representatives thereof, for acceptance or rejection, within such time as the Commission shall specify, together with the report or reports of the Commission thereon or such a summarization thereof as the Commission may approve, and the opinion and order of the judge: *Provided,* That submission to any class of stockholders shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, (a) that at the time of the finding the corporation is insolvent, or that at the time of the finding the equity of such class of stockholders has no value, or that the plan provides for the payment in cash to such class of stockholders of an amount not less than the value of their equity, if any, or (b) that the interests of such class of stockholders will not be adversely and materially affected by the plan, or (c) that the debtor has pursuant to authorized corporate action accepted the plan and its stockholders are bound by such acceptance: *Provided further,* That submission to any class of creditors shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, that the interests of such class of creditors will not be adversely and materially affected by the plan, or that at the time of the finding the interests of such

class of creditors have no value, or that the plan provides for the payment in cash to such class of creditors of an amount not less than the value of their interests. For the purpose of this section the acceptance or rejection by any creditor or stockholder shall be in writing, executed by him or by his duly authorized attorney, committee, or representative. If the United States of America, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of which is owned by the United States of America, is a creditor or stockholder, the interests or claims thereof shall be deemed to be affected by the plan, and the President of the United States or any officer or agency he may designate, is hereby authorized to act in respect of the interests or claims of the United States or of such agency or other corporation. The expense of such submission shall be certified by the Commission and shall be borne by the debtor's estate. The Commission shall certify to the judge the results of such submission.

"Upon receipt of such certification, the judge shall confirm the plan if satisfied that it has been accepted by or on behalf of creditors of each class to which submission is required under this subsection holding more than two-thirds in amount of the total of the allowed claims of such class which have been reported in said submission as voting on said plan, and by or on behalf of stockholders of each class to which submission is required under this subsection holding more than two-thirds of the stock of such class which has been reported in said submission as voting on said plan; and that such acceptances have not been made or procured by any means forbidden by law: *Provided,* That if the plan has not been so accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment for the interests or claims

of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it and all the relevant facts; and that the plan conforms to the requirements of clauses (1) to (3), inclusive, of the first paragraph of this sub-section (e) . . ."